

REMARKS

Claims 1, 3-21, and 25-40 are pending after the cancellation of claims 2 and 22-24. The amendments to claim 1 are supported by the original claims, particularly claims 2 and 22-24. Therefore, these amendments do not add new matter.

The Office maintained the rejection of claims 1-31 and 33-40 under 35 U.S.C. § 102(b) as being anticipated by WO 95/13799. The Office asserted that this reference teaches a process for microencapsulating an active agent by coacervation, by dissolving a polymer in an organic solvent containing the active agent, mixing the polymer/active agent solution with another liquid using a static mixer, wherein the organic solvent is ethyl acetate and an alcohol or ketone of 1 to 3 carbons and the liquid contains a surfactant, polyvinyl alcohol. Furthermore, according to the Office, the reference discloses that the mixture is quenched at 0-4 °C with water or an aqueous solution containing the surfactant in the liquid.

While Applicants do not agree with the Office's assessment that this reference anticipates the claimed invention, merely to expedite prosecution, claim 1, and thus the claims that ultimately depend on claim 1, have been amended to indicate that the solvent "is selected from ethyl acetate, N-methylpyrrolidone, methyl ethyl ketone, acetic acid, and propylene carbonate, and mixtures thereof," that the nonsolvent is "an alcohol containing 2 to 3 carbon atoms selected from ethanol, 2-propanol, 1,2-propane diol, and glycerol," and that "the nonsolvent and curing agent are either: (A) 1,2-propanediol and

2-propanol, (B) glycerol and 1,2-propanediol, (C) glycerol and 2-propanol, (D) 2-propanol and 1,2-propanediol, (E) ethanol and water, or (F) 2-propanol and water.” This combination of conditions is not provided by the processes disclosed in WO 95/13799. In fact, the claimed nonsolvents do not appear to be disclosed at all. Thus, the reference cannot anticipate the claimed invention. M.P.E.P. § 2131. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 102(b) be withdrawn.

The Office also relied on WO 95/13799 to reject claim 32 under 35 U.S.C. § 103 because it asserted that a coacervation temperature equal to -4°C would have been obvious to one of skill in the art since the advantages of this temperature were not disclosed by Applicants. While not acquiescing to the basis for this rejection, Applicants have amended claim 1, and therefore claim 32, which ultimately depends from claim 1, to include the combination of elements described above. Because WO 95/13799 does not disclose a process with the combination of elements recited in claims 1 and 32, nor would this combination have been obvious to those of skill in the art, the claimed invention has not been rendered obvious. M.P.E.P. § 2143.03. Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. § 103 be withdrawn.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: August 16, 2005

By: _____



Deborah Katz

Reg. No. 51,863

Phone: (202) 408-4382

Fax: (202) 408-4400

E-mail: deborah.katz@finnegan.com